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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,648	12/30/2003	Eugenio Go Varona	17986	6897

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EXAMINER

SALVATORE, LYNDA

ART UNIT PAPER NUMBER

1771

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/748,648	Applicant(s) VARONA ET AL.	
	Examiner Lynda M. Salvatore	Art Unit 1771	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the microcreping process taught by US '493 acts upon the entire web and that substituting the primary microcreping process of US '493 with the microcreping process taught in EP '035 would not provide the claimed laminate having a first layer with a mean pore size greater than 100 microns and a second layer having a mean pore size of less than 70 microns. Applicant is of the position that the Examiner is suggesting to combine microcreping processes. In other words, Applicant asserts that the Examiner is suggesting to further microcrepe the laminate already formed in US '493. These arguments are not found persuasive.

The primary reference of US '493 was relied upon to teach the claimed laminate structural limitations (e.g., a microcreped non-woven laminate). The primary reference of US '493 failed to specifically teach microcreping the non-woven laminate using an apparatus and/or method to produce a first layer with a mean pore size greater than 100 microns and a second layer having a mean pore size of less than 70 microns. However, US '493 did teach various microcreping apparatuses and/or methods including microcreping each side of the laminate. According to the primary reference of US '493 there are several microcreping parameters which can be varied to produce the desired results (section 0048-0050). In the instant case, the secondary reference of EP '035 was provided to evidence that there are microcreping methods and/or apparatuses known in the art to produce the claimed pore size limitations. The specific microcreping apparatus/process taught by EP '035 textures the surface of a non-woven to result in a pore size distribution of at least 30% having a radius greater than 100 microns and at least 5% having a radius less than 70 microns. As such, it is the position of the Examiner that based on the teachings of the prior art references, one of ordinary skill in the art would recognize that the non-woven laminate of US '493 could be microcreped as taught by EP '035. Furthermore, Applicant's first and second non-woven layer are not precluded from having both pore sizes or limited to having a certain percentage of pore size. In the instant case, the microcreping process of EP '035 provides a textured surface having both pores greater than 100 microns and less than 100 microns (see table 2 of EP '035). With regard to Applicant's second layer, Applicant is reminded that less than 100 microns would also include values of zero and less.



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